Playa Del Rey [sic] areas of the City, located on the northeast side of Anise Avenue, approximately 115 feet northerly of 80th Street, having a frontage of approximately 79 feet and a maximum depth of approximately 141 feet. The parcel contains approximately 12,890 square feet and was formerly zoned for and developed with a commercial use which has since been abandoned. The zoning on the adjacent parcel to the south which is developed with a gas station is commercial, C2-1. The properties to the northeast and northwest are zoned residential, R1, and developed with single family homes. C2 zoning exists on the parcel across Anise Avenue which is developed with a neighborhood market.

4. On November 20, 1980, a motion was adopted by the Los Angeles City Council ("Council") requesting that the

City Planning Department prepare a zone change for the subject property which would allow low-medium residential density, more compatible with the surrounding residential uses than the existing commercial zoning.

5. On March 2, 1981, the zone change was considered in a public hearing conducted by Frank Fielding, a Hearing Examiner, who conducts hearings on behalf of the City Planning Commission. At the hearing, one of the plaintiffs, Mr. Simon, appeared and voiced opposition to the proposed zone change. A representative of the prospective purchaser of the property also spoke in opposition to the zone change. In all, 18 people were present at the hearing. The Hearing Examiner prepared a report, dated March 26, 1981, summarizing the testimony at the hearing and documents related to the rezoning.

The report contained his recommendation to approve the zone change with his findings and reasons in support of his recommendation. Exhibits to his report include petitions and letters submitted by neighbors, CC and R's for surrounding properties, drawings for a proposed 10-unit condominium project and photographs of the property, among other documents.

6. The Hearing Examiner recommended the change of zone from C2 to RD2-1 as a step in the direction of low density designation for the property in the Westchester-Playa Del Rey District Plan ("District Plan"). The District Plan would further restrict the subject property to low-density development. However, the Hearing Examiner found that due to the presence of a gas station adjacentto the south, RD2-1 was a preferable zone for the subject property

rather than F1. That is, in the Hearing Examiner's opinion, a six-unit condominium was more compatible next to a commercial use than a single-family dwelling. On the other hand, a six-unit condominium was more compatible next to houses on the north than a ten-unit condominium.

7. On April 2, 1981, the City Planning Commission voted to adopt the findings of the Hearing Examiner and recommend adoption of the zone change ordinance by the City Council.

8. On September 1, 1981, the Planning and Environment Committee ("Committee") of the Council considered the zone change matter, held a public hearing, adopted the findings of the City Planning Commission and prepared a report to the Council recommending adoption of the RD2-1 zone as good transition between the commercial corner to the south

developed with a service station and the single family dwellings to the north. Moreover, the Committee recommended RD2-1 zoning on the property because six units would generate less traffic in this single family area than the ten units proposed to be built.

9. On October 14, 1982, the Council considered the report of the Committee regarding the proposed zone change on the subject property. Another public hearing was held at which the property owner, the attorney for the property owner, and the developer spoke in opposition to the ordinance under consideration. In all, five speakers expressed their views of the zone change, the first two in favor and the last three opposed to the rezoning. A representative from the Planning Department spoke and so did the representative of the Council office from

the district in which the property is located. After hearing all testimony, the Council voted 11-0 to adopt the report of the Committee approving the ordinance. On October 28, 1981, the ordinance was published in a daily newspaper, printed and published in the City of Los Angeles.

10. Plaintiffs have not applied for a building permit for a specific proposed development of six units or ten units or any other description nor sought a zone variance for any proposed project.

11. On March 20, 1974, the Council adopted the District Plan by Council Resolution. The District Plan is part of the land use element of the City's General Plan. It is applicable in the above-named district, one of the 35 planning districts in the City. The District Plan was the product of several years work by members of the City Planning Department staff,

members of the Council, hundreds of interested citizens from the business community, homeowner groups and landowning interests in the District. The Plan's formation involved numerous public meetings, studies, reports and attention from officials at many levels of government.

12. The District Plan is a general guide to future land uses in the affected area. The subject property is shown in yellow on the Plan which corresponds to low density housing of three to seven dwelling units per gross acre in an RS, R1, or RE9 zone. The subject property can be seen as part of an area almost completely shown in yellow, with a school site in dark green to the south, another school site a few blocks to the north, and a small block of red to the south and west. The Plan has the objective of

"encourag[ing] the preservation and enhancement of the varied and distinctive residential character of the District." The land use policies of the Plan include the following statememts regarding housing:

> Property in residential zones permitting densities in excess of those designated on the Plan shall be reclassified to zones corresponding to the designated densities.

and

> Changes of zones permitting densities in excess of those designated in the Plan shall be approved only if a compensating reduction in density can be made at some other location in Westchester-Play Del Rey and adequate access and public services are available.

13. The subject change of zone substantially conforms to the District Plan designation of low-density housing

for plaintiffs' property.

14. Westchester is a largely developed residential community without much vacant land for future development. As a result, there is very little development or zoning activity in the area.

15. Mr. Simon appeared in person at the hearing of March 2, 1981, before the Hearing Examiner, and was given time to present any and all objections he had to the proposed change of zone. He was given an opportunity to state all of the reasons he had for maintaining C2 zoning on the property and rejecting the proposed RD2-1. Mr. Simon and his counsel also appeared before and had an opportunity to be heard by the Committee of the Council and the full Council regarding their opposition to the proposed change of zone.

16. RD2-1 zoning on the subject

property allows for low-medium residential uses of seven to 24 dwelling units per gross acre. As applied to the property which is the subject of this litigation, the Hearing Examiner's report contains the calculation that six condominium units would be accommodated on the site as zoned.

17. The Hearing Officer, the City Planning Commission, the Committee, and the Council found that the change of zone substantially conformed to the Plan and was consistent with good zoning practice of the transitional-buffer zoning between a commercial corner to the south and single family dwellings to the north.

CONCLUSIONS OF LAW

1. A presumption of validity attaches to the legislative acts of zoning authorities and it is plaintiffs' burden to overcome the presumption of validity of

a challanged zoning ordinance disputed herein and to show that the ordinance constitutes a "taking" of property.

2. An ordinance constitutes a "taking" of property if it does not substantially advance a legitimate state interest or if it denies the owner an economically viable use of his property.

3. The ordinance challenged herein, changing a zone from C2 to RD2-1 is substantially consistent with the Westchester-Playa Del Rey District Plan low density residential designation for the property and thereby the change of zone advances the legitimate state interest of bringing zoning into conformity with planning.

4. The change of zone advances the legitimate state interest of good zoning practice of providing a transitional, buffer zone of low-medium residential

density between between single family dwellings to the north and a commercial service station to the south as well as reducing traffic and parking impacts from a higher density project.

5. The change of zone from C2 to RD2-1 leaves plaintiffs a substantial and economically viable use of their property to wit: any multiple and residential project of between seven and 24 dwelling units per gross acre. Agins v. Tiburon, 447 U.S 225 (1980).

6. Notice of the above-described hearing is required by law. Plaintiffs did not receive formal notice of the hearing despite efforts by defendant to comply with the notice requirement. Nevertheless, plaintiffs were present at all hearings. Under Cal. Gov. Code, Section 65801 plaintiff must demonstrate substantial harm and prejudicial error to

overcome the zone change decision. Plaintiffs came forward with no such showing.

7. Any alleged defect in the notice of hearing received by plaintiffs is irrelevant to these proceedings in that plaintiffs appeared three times, twice with their counsel, and were given an opportunity to object to the change zone before adoption of the ordinance. They can show no prejudice, injury or probability of a different result if the alleged defect had been cured.

8. Because the ordinance allows low-medium density residential development in a largely residential, partly commercial area, it cannot be shown to be unconstitutional on its face.

9. Any claim of unconstitutionality of this ordinance as applied to plaintiffs in this action is premature as plaintiffs

have failed to exhaust or even pursue their remedies with the City regarding a specific proposed project before coming to this court.

10. 42 U.S.C. Section 1983 does not create substantive rights but merely provides a remedy if rights secured from another source have been infringed. Since plaintiffs have shown no rights secured by the United States Constitution to have been infringed, 42 U.S.C. Section 1983 on its own cannot constitute a cognizable claim against the City.

11. Plaintiffs have raised no genuine issue as to any material fact and defendant City is entitled to judgment as a matter of law.

RICHARD A.GADBOIS, JR.
United States
District Judge